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In the Supreme Court of the United States

OCTOBER TERM, 1983

JAMES W. BUTLER and
GUARANTY NATIONAL BANK,
an Oklahoma Corporation
Petitioners

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION
Respondent

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether any federal question was involved in the state court proceedings and, if so, whether such question was raised in the state court proceedings so as to make it reviewable by this Court.

TABLE OF CONTENTS

Page

Question Presented ..... *i*

Arguments 3

I: *The assumption of the existing loan is considered to be a new loan as of the date of assumption.* 3

II: *The assumption agreement was made pursuant to a commercial venture and was not made for personal, family, household, or agricultural purposes.* 3

III: *The interest rate of the original note when it was signed by the original maker on July 24, 1978 did not exceed 10% per annum, the level for determining its classification as a consumer loan under the Oklahoma Statutes.* 4

IV: *The interest rate, being less that 10%, cer tainly did not exceed the 18% rate applicable under the Oklahoma Statute at the time petitioner assumed the loan on August 24, 1981* 4

Conclusion 5

AUTHORITIES CITED

Page

CASES:

Edleman v. People of State of California,
73 S.Ct. 293, 344 U.S. 357, 359,
97 L.Ed. 387, 391 (1953) 2

Cardinale v. Louisiana,
89 S.Ct. 1161, 394 U.S. 437,
22 L.Ed. 398 (1969) 2

Tacan v. Arizona,
93 S.Ct. 998, 410 U.S. 351,
35 L.Ed.2d 346 (1973) 2

Torrence v. Salenger,
297 F.2d 902, cert. denied, 82 S.Ct. 1161,
369 U.S. 887, 8 L.Ed.2d 288 (1962) 2

STATUTES AND REGULATIONS

Rules of the United States Supreme Court,
Rule 21.1(h) 2

Regulations of the Oklahoma Administrator,
Department of Consumer Affairs,
Uniform Consumer Credit Code, Rule 226.8(k) ... 3

Title 14A, Oklahoma Statutes, §3-104 4

Title 14A, Oklahoma Statutes, §3-105 4

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The petition states no valid ground for certiorari. No question of federal law is involved in this litigation. No question of federal law was raised in the state court.

> " . . . It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law. Hulbert v. Chicago, 202 U.S. 275, 50 L.Ed. 1026, 26 S.Ct. 617 (1906); Mutual Life Ins. Co. v. McGrew, 188 U.S. 291, 308, 47 L.Ed. 480, 484, 23 S.Ct. 375, 63 LRA 33 (1903). Noncompliance with such local law can thus be an adequate state ground

for a decision below." *Edleman v. People of State of California,* 73 S.Ct. 293, 344 U.S. 357, 359, 97 L.Ed. 387, 391 (1953).

See also: *Tacan v. Arizona,* 93 S.Ct. 998, 410 U.S. 351, 35 L.Ed.2d 346 (1973); *Cardinale v. Louisiana,* 89 S.Ct. 1161, 394 U.S. 437, 22 L.Ed. 398 (1969); *Torrance v. Salenger,* 297 F.2d 902, cert. denied, 82 S.Ct. 1161, 369 U.S. 887, 8 L.Ed.2d 288 (1962).

The petition does not comply with Rule 21.1(h) of the Rules of the United States Supreme Court. After the appeal was decided adversely to the petitioner by the Oklahoma Supreme Court, in furtherance of his efforts to get a free house, he has attempted to manufacture federal questions and to raise non-existent issues in his petition for certiorari.

On or about July 24, 1978, Barbara A. Foster purchased the house, the mortgage on which, is the subject of this case. To finance her purchase, Foster executed a promissory note and mortgage covering subject property. The interest rate on the original FHA insured loan as stated on the note is 9.5%. The petitioner, James W. Butler, who is engaged in the business of renting houses to tenants, purchased the house as rental property from Foster on or about August 24, 1981 when the interest rate on FHA loans was 16.5%. To finance this commercial venture, Butler assumed the note and mortgage at the original 9.5% rate of interest. From the time of his assumption to the present date, Butler has made no pay-

ments on the note. On April 26, 1982, this foreclosure action was instituted in the District Court of Tulsa, County, State of Oklahoma.

The Oklahoma Supreme Court held that the subject transaction was not a consumer loan. Such finding of the appellate state court does not involve any constitutional considerations either of the State of Oklahoma or of the United States. It is based upon sound and proper legal grounds.

I.

The assumption of the existing loan is considered to be a new loan as of the date of assumption.

"Assumption of an obligation. Any creditor who accepts a subsequent customer as an obligor under an existing obligation shall make disclosures required by this part to that customer before he becomes so obligated. If the obligation so assumed is secured by a first lien or equivalent security interest on a dwelling, and the assumption is made for the subsequent customer to acquire that dwelling, that obligation shall be considered a loan made to finance the purchase of that dwelling." *Rule 226.8(k), Regulations of the Oklahoma Administrator, Department of Consumer Affairs, Uniform Consumer Credit Code.*

II.

The assumption agreement was made pursuant to a commercial venture and was not made for personal, family, household, or agricultural purposes.

"Q. When you purchased this house, 4945 North Trenton, did you purchase it with a view in mind to rent it out to tenants?

A. Yes I did.

Q. And you never intended to live there yourself?

A. No, I had no intention of living there."
(Butler Dep. p. 5).

" . . . a 'consumer loan' is a loan made by a person regularly engaged in the business of making loans in which . . . (2) the debt is incurred primarily for a personal, family or household purpose; . . ."
Title 14A, Ok. Stat., §3-104.

III.

The interest rate of the original note when it was signed by the original maker on July 24, 1978 did not exceed 10% per annum, the level for determining its classification as a consumer loan under the Oklahoma Statutes.

" . . . 'consumer loan' does not include a 'loan primarily secured by an interest in land', if at the time the loan is made . . . the loan finance charge does not exceed ten percent (10%) per year. . . " *Title 14A, Ok. Stat.*, §3-105.

IV.

The interest rate, being less than 10%, certainly did not exceed the 18% rate applicable under the Oklahoma Statute at the time petitioner assumed the loan on August 24, 1981.

" . . . 'consumer loan' does not include a 'loan primarily secured by an interest in land', if at the time the loan is made . . . the loan finance charge does not

exceed eighteen percent (18%) per year . . . " *Title 14A, Ok. Stat.,* §3-105, as amended effective March 26, 1980.

CONCLUSION

The decision of the Oklahoma Supreme Court is based upon findings of fact and interpretation of Oklahoma statutes. No federal questions or issues are involved. The petition for certiorari should be denied.

Respectfully submitted,

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